

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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EDWIN C. WEST,

Plaintiff,

v.

STEVE HAMILTON, AMY WYTTEBACH,  
DENNIS SNYDER and DARLENE  
HEIMERMAN-RAMSEY,

Defendants.  
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OPINION AND  
ORDER

04-C-211-C

Plaintiff Edwin C. West, proceeding pro se, is a civilly committed patient under Wis. Stat. Chapter 980 at the Sand Ridge Secure Treatment Center in Mauston, Wisconsin. He seeks monetary and declaratory relief against defendants Steve Hamilton, Amy Wyttenbach (formerly known as Amy Dye), Dennis Snyder and Darlene Heimermann-Ramsey for allegedly violating his equal protection rights under 42 U.S.C. § 1983 when they removed him from group treatment and placed him in individualized treatment. Jurisdiction is present. 28 U.S.C. § 1331.

Presently before the court are the parties' cross motions for summary judgment. Plaintiff's case raises the question of what kind of showing is necessary for a plaintiff to

prove a “class of one” equal protection claim. I find that plaintiff has not shown either that he was similarly situated to other patients at Sand Ridge or that he was treated differently from all other patients. Accordingly, his “class of one” equal protection violation claim fails. This makes it unnecessary to consider defendants’ qualified immunity defense.

From the parties’ proposed findings of fact and the record, I find the following facts to be material and undisputed.

#### UNDISPUTED FACTS

Plaintiff Edwin C. West has been a patient at the Sand Ridge Secure Treatment Center in Mauston, Wisconsin under Wis. Stat. Chapter 980, the sexually violent person commitment law, since September 10, 2001. The center houses violent sex offenders who accept treatment after their prison sentences and who consent in writing to receive treatment.

At all relevant times, the following persons worked at the Sand Ridge Secure Treatment Center: 1) defendant Darlene Heimermann-Ramsey was a treatment coordinator for the corrective thinking program; 2) defendant Steve Hamilton was a unit manager at the center with supervisory and administrative responsibilities for the unit in which plaintiff was living; 3) defendant Amy Wytttenbach was a certified therapeutic recreational specialist at the center; and 4) David Thornton was the treatment director. (Neither side proposes any

facts regarding defendant Dennis Snyder.)

Thornton and defendants Hamilton and Heimermann-Ramsey developed a corrective thinking program for highly psychopathic offenders who display a relatively high level of anti-social personality traits, such as an arrogant and manipulative interpersonal style with shallow emotions, callousness and “lifestyle impulsiveness.” The program is organized into two parts. In the first one patients learn how to reduce their use of tactics and to substitute more responsible ways of thinking and behaving for the criminal thinking and decisionmaking that they have used in the past. Part two focuses on the way patients’ criminal thinking errors have been expressed in past sexual behavior, on the development of a more responsible sexual lifestyle and on the identification and management of offense-related sexual interests.

Defendants have developed corrective thinking cards to identify thinking errors that a particular patient displays. Patients are expected to take responsibility for other patients’ behavior and help one another make progress in treatment by writing corrective thinking cards. Plaintiff never wrote a corrective thinking card about any of his fellow group members.

Once a patient receives a corrective thinking card, the patient is to go to a “carefrontation group” that consists of staff and peers who identify negative behaviors relevant to past criminal behaviors. Ideally, during the “carefrontation group” patients will

acknowledge the negative behavior on the corrective thinking card and identify the tactics and barriers exhibited in the behavior.

A patient's participation and progress through the corrective thinking program determines the length of intervention. A patients who does not demonstrate consistent progress or change within a particular portion of the program may be required to repeat that portion and must make significant progress in treatment to be eligible for supervised release.

Plaintiff has been in the corrective thinking program since his arrival at the Sand Ridge Secure Treatment Center. In March 2003, plaintiff started phase four of the corrective thinking program and was a member of group #2, which consisted of eight other patients, all of whom received corrective thinking cards. Plaintiff and his fellow group members had the same short-term and long-term goals in their patient treatment learning plan.

Defendant Wyttenbach wrote corrective thinking cards for patients whose behaviors she witnessed during this phase of the corrective thinking program. On several occasions, defendant Wyttenbach wrote progress notes about plaintiff's behaviors or witnessed plaintiff using tactics and barriers, but did not issue a corrective thinking card. Wyttenbach did not notify plaintiff's group members about these ongoing behavior issues written in the progress notes. Wyttenbach does not know why she did not issue corrective thinking cards on these occasions but she does not view the cards as the most important part of the corrective

thinking program. Treatment director Thornton noted an absence of corrective thinking cards written about plaintiff despite the behavior documented in plaintiff's progress notes.

Although defendant Wyttenbach typically wrote corrective thinking cards for the patients who participated in her treatment groups, she did not always write corrective thinking cards to hold a patient accountable. She talked to plaintiff often about his behavior. Despite these discussions, his negative behavior continued. In one progress note, defendant Wyttenbach wrote that she did not have other patients in plaintiff's unit come into her office and talk as much as plaintiff and that plaintiff's visits were becoming a problem. Plaintiff complimented defendant Wyttenbach on her clothes several times, but he never made any sexual comments to her and never asked her for sexual favors.

Plaintiff received his first corrective thinking card for using tactics and barriers on July 15, 2003, the day that defendants removed him from phase four of the corrective thinking program, referred him to an individualized treatment opportunity and assigned him to participate in the re-integration group, another part of the corrective thinking program that involves individualized work designed to enable a patient to overcome barriers to effective participation in the regular treatment group. Defendants did not remove plaintiff from the corrective thinking program altogether. Treatment director Thornton recommended that plaintiff's individualized treatment plan require him to identify and dramatically reduce the frequency of the pervasive intimidating behavior that he had used in the past and

demonstrate commitment to holding other patients accountable by writing corrective thinking cards on other patients. Thornton believed that plaintiff's behavior toward defendant Wyttenbach represented an attempt to impose his own sexual and romantic feelings on an unwilling and inappropriate partner in a manner that reflected some of the pathologies that underlay plaintiff's sexual offending.

It is not uncommon for patients at the Sand Ridge Secure Treatment Center to be placed in an individualized treatment opportunity. It is a treatment tool that staff use to help patients with behaviors that interfere with treatment so that the patient can be successful with his treatment program. Currently, there are 14 patients involved in the individualized treatment opportunity portion of the corrective thinking program.

## OPINION

As I understand plaintiff's complaint, he is contending that defendants ignored the corrective thinking program procedure intentionally when they failed to issue him corrective thinking cards after observing him display negative behaviors, while issuing cards to other patients. According to plaintiff, because of defendants' failure to issue him corrective thinking cards, the group was never able to help plaintiff change his negative behaviors and instead of allowing plaintiff to benefit from group therapy, defendants transferred him to an individualized treatment opportunity. Although plaintiff does not make the argument, I will

assume for the purpose of the parties' motions for summary judgment that plaintiff's transfer to an individualized treatment opportunity lengthens the time that he will spend at the Sand Ridge Secure Treatment Center.

Plaintiff frames his argument as a "class of one" equal protection violation. The Court of Appeals for the Seventh Circuit has recognized equal protection claims brought by a "class of one," but has acknowledged that it is difficult to succeed with such a claim. McDonald v. Village of Winnetka, 371 F.3d 992, 1001 (7th Cir. 2004). "A class of one equal protection claim may be brought where (1) the plaintiff alleges that he has been intentionally treated differently from others similarly situated and (2) that there is no rational basis for the difference in treatment or the cause of the differential treatment is 'totally illegitimate animus' toward the plaintiff by the defendant." Id.

Plaintiff did not produce any evidence to prove the he and other patients at the center are "prima facie identical in all relevant respects." Id. at 1002 (quoting Purze v. Village of Winthrop Harbor, 286 F.3d 452, 455 (7th Cir. 2002) ("holding that in order to be considered 'similarly situated,' comparators must be '*prima facie* identical in all relevant respects"). The best plaintiff did was prove that his fellow patients received corrective thinking cards, that defendants found some of the patients to have used barriers in thinking and closed thinking and that plaintiff and his fellow group members had the same short-term and long-term goals in their patient treatment learning plan. Plaintiff proposed no facts and

provided no evidence to show that fellow patients were similar in any other relevant respect.

It is undisputed that patients in the corrective thinking program are expected to write corrective thinking cards for other patients in the program when they witness patients displaying negative behaviors and that plaintiff never wrote a corrective thinking card for any of his fellow group members. Furthermore, it is undisputed that treatment director Thornton recommended that plaintiff's individualized treatment opportunity require plaintiff to hold other patients accountable by writing corrective thinking cards for other patients.

Also, plaintiff failed to prove that other patients displayed intimidating behavior similar to his. In fact, the undisputed evidence reveals that plaintiff was different from other patients at the treatment center. It is undisputed that defendant Wyttenbach wrote in one progress note that she did not have other patients in plaintiff's unit come into her office and talk as much as plaintiff and that plaintiff's visits were becoming a problem. Treatment director Thornton recommended that plaintiff's individualized treatment opportunity include a requirement for plaintiff to identify and dramatically reduce the frequency of the pervasive intimidating behavior that he had used in the past. Plaintiff has adduced no evidence to support a finding that he was similarly situated to other patients or that defendants lacked a rational basis for declining to issue him corrective treatment cards or for sending him to an individualized treatment opportunity within the corrective thinking



program.

Plaintiff argues that defendants failed to follow their own procedure by not issuing corrective thinking cards after every thinking error by a patient. According to plaintiff, defendants did not have discretion to fail to issue corrective thinking cards when they observed a patient displaying negative behaviors. Even if I assume that plaintiff's assessment of the procedure is accurate and that defendants must issue a corrective thinking card after each display of negative behavior by a patient, plaintiff still must show that another similarly situated individual was treated differently. Lunini v. Grayeb, 395 F.3d 761, 770 (7th Cir. 2005) ("class of one arguments based on internal government rules or standard operating procedures are insufficient --- a plaintiff must show that another similarly situated individual was in fact treated differently"). Plaintiff is unable to make such a showing. In fact, it is undisputed that as a general matter, defendant Wytttenbach did not always write corrective thinking cards to hold patients accountable. Therefore, plaintiff was neither the only patient at the center who did not receive a corrective thinking card for displaying negative behavior nor the only one transferred to an individualized treatment opportunity; it is undisputed that it is not uncommon for patients at the center to be placed in an individualized treatment opportunity. "[A] class of one claim must fail where the plaintiff has 'failed to identify someone who is similarly situated but intentionally treated differently than he.'" Id. ("[T]he essence of an equal protection violation is, after all, *discrimination* of some sort.").

Because no reasonable juror could infer that defendants discriminated against plaintiff when they failed to issue him corrective thinking cards and sent him to an individualized treatment opportunity, I will grant defendants' motion for summary judgment and deny plaintiff's motion.

#### ORDER

IT IS ORDERED that

1. The motion for summary judgment of defendants Steve Hamilton, Amy Wyttenbach, Dennis Snyder and Darlene Heimermann-Ramsey is GRANTED and plaintiff Edwin C. West's motion for summary judgment is DENIED;

2. The clerk of court is directed to enter judgment for defendants and close this case.

Entered this 11th day of April, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge